

## National Transportation Safety Board

## § 835.2

(b) Wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined that the Board has no further need of such wreckage, mail, cargo, or records. When such material is released, Form 6120.15, "Release of Wreckage," will be completed, acknowledging receipt.

[62 FR 3808, Jan. 27, 1997]

### § 831.13 Flow and dissemination of accident or incident information.

(a) Release of information during the field investigation, particularly at the accident scene, shall be limited to factual developments, and shall be made only through the Board Member present at the accident scene, the representative of the Board's Office of Public Affairs, or the investigator-in-charge.

(b) All information concerning the accident or incident obtained by any person or organization participating in the investigation shall be passed to the IIC through appropriate channels before being provided to any individual outside the investigation. Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action. However, no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the Safety Board without prior consultation and approval of the IIC.

[53 FR 15847, May 4, 1988, as amended at 62 FR 3808, Jan. 27, 1997]

### § 831.14 Proposed findings.

(a) *General.* Any person, government agency, company, or association whose employees, functions, activities, or products were involved in an accident or incident under investigation may submit to the Board written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendations designed to prevent future accidents.

(b) *Timing of submissions.* To be considered, these submissions must be received before the matter is calendared for consideration at a Board meeting. All written submissions are expected to have been presented to staff in advance of the formal scheduling of the meeting. This procedure ensures orderly and thorough consideration of all views.

(c) *Exception.* This limitation does not apply to safety enforcement cases handled by the Board pursuant to part 821 of this chapter. Separate *ex parte* rules, at part 821, subpart J, apply to those proceedings.

[62 FR 3808, Jan. 27, 1997]

## PART 835—TESTIMONY OF BOARD EMPLOYEES

Sec.

- 835.1 Purpose.
- 835.2 Definitions.
- 835.3 Scope of permissible testimony.
- 835.4 Use of reports.
- 835.5 Manner in which testimony is given.
- 835.6 Request for testimony.
- 835.7 Testimony of former Board employees.
- 835.8 Procedure in the event of a subpoena.
- 835.9 Testimony in State or local investigations.

AUTHORITY: 5 U.S.C. 301; 49 U.S.C. 1441; and 49 U.S.C. 1901 *et seq.*

SOURCE: 55 FR 41541, Oct. 12, 1990, unless otherwise noted.

### § 835.1 Purpose.

This part prescribes the policies and procedures regarding the testimony of employees of the National Transportation Safety Board (Board) in suits or actions for damages and criminal proceedings arising out of transportation accidents. The purpose of this part is to ensure that the time of Board employees is used only for official purposes, to avoid embroiling the Board in controversial issues that are not related to its duties, to avoid spending public funds for non-Board purposes, to preserve the impartiality of the Board, and to prohibit the discovery of opinion testimony.

### § 835.2 Definitions.

*Accident* for purposes of this part includes "incident."

*Board's accident report* means the report containing the Board's determinations, including the probable cause of an accident, issued either as a narrative report or in a computer format (briefs of accidents). Pursuant to section 701(e) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1441(e)) (FA Act) and section 304(c) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(c)) (Safety Act), no part of these reports may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such reports.

*Factual accident report* means an investigator's report of his investigation of the accident.

### **§ 835.3 Scope of permissible testimony.**

(a) Section 701(e) of the FA Act and section 304(c) of the Safety Act preclude the use or admission into evidence of Board accident reports in any suit or action for damages arising from accidents. These sections reflect Congress' "strong \* \* \* desire to keep the Board free of the entanglement of such suits." Rep. No. 93-1192, 93d Cong., 2d Sess., 44 (1974), and serve to ensure that the Board does not exert an undue influence on litigation. The purposes of these sections would be defeated if expert opinion testimony of Board employees, which may be reflected in the views of the Board expressed in its reports, were admitted in evidence or used in litigation arising out of an accident. The Board relies heavily upon its investigators' opinions in its deliberations. Furthermore, the use of Board employees as experts to give opinion testimony would impose a significant administrative burden on the Board's investigative staff. Litigants must obtain their expert witnesses from other sources.

(b) For the reasons stated in paragraph (a) of this section and § 835.1, Board employees may only testify as to the factual information they obtained during the course of an investigation, including factual evaluations embodied in their factual accident reports. However, they shall decline to testify regarding matters beyond the scope of their investigation, and they shall not give any expert or opinion testimony.

### **§ 835.4 Use of reports.**

(a) A Board employee may use a copy of his factual accident report as a testimonial aid, and may refer to that report during his testimony or use it to refresh his memory.

(b) Consistent with section 701(e) of the FA Act and section 304(c) of the Safety Act, a Board employee may not use the Board's accident report for any purpose during his testimony.

### **§ 835.5 Manner in which testimony is given.**

(a) Testimony of Board employees may be made available for use in actions or suits for damages arising out of accidents through depositions or written interrogatories. Board employees are not permitted to appear and testify in court in such actions.

(b) Normally, depositions will be taken and interrogatories answered at the Board's office to which the employee is assigned, and at a time arranged with the employee reasonably fixed to avoid substantial interference with the performance of his duties.

(c) Board employees are authorized to testify only once in connection with any investigation they have made of an accident. Consequently, when more than one lawsuit arises as a result of an accident, it shall be the duty of counsel seeking the employee's deposition to ascertain the identity of all parties to the multiple lawsuits and their counsel, and to advise them of the fact that a deposition has been granted, so that all interested parties may be afforded the opportunity to participate therein.

(d) Upon completion of the deposition of a Board employee, a copy of the transcript of the testimony will be furnished, at the expense of the party requesting the deposition, to the Board's Counsel for the Board files.

### **§ 835.6 Request for testimony.**

(a) A request for testimony of a Board employee relating to an accident by deposition or interrogatories shall be addressed to the General Counsel, who may approve or deny the request. Such request shall set forth the title of the case, the court, the type of accident (aviation, railroad, etc.), the date and place of the accident, the reasons